

## FINJAN, INC.,

Plaintiff,

V.

## BLUE COAT SYSTEMS, LLC,

Defendant.

Case No. 15-cv-03295-BLF

## **ONIMBUS ORDER RE: SEALING MOTIONS**

[Re: ECF 300, 305]

Before the Court are two administrative motions to file under seal, one from Plaintiff Finjan, Inc. (“Finjan”) and one from Defendant Blue Coat Systems, LLC (“Blue Coat”). ECF 300, 305. Both relate to the briefing on the parties’ motions *in limine*. *See id.* For the reasons set forth below, each of the parties’ motions is GRANTED IN PART and DENIED IN PART.

## I. LEGAL STANDARD

“Historically, courts have recognized a ‘general right to inspect and copy public records and documents, including judicial records and documents.’” *Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (quoting *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 597 & n.7 (1978)). Consequently, access to motions and their attachments that are “more than tangentially related to the merits of a case” may be sealed only upon a showing of “compelling reasons” for sealing. *Ctr. for Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092, 1101-02 (9th Cir. 2016). Filings that are only tangentially related to the merits may be sealed upon a lesser showing of “good cause.” *Id.* at 1097. In addition, sealing motions filed in this district must be “narrowly tailored to seek sealing only of sealable material.” Civil L.R. 79-5(b). A party moving to seal a document in whole or in part must file a declaration establishing that the identified material is “sealable.” Civ. L.R. 79-5(d)(1)(A). “Reference to a stipulation or

1 protective order that allows a party to designate certain documents as confidential is not sufficient  
2 to establish that a document, or portions thereof, are sealable.” *Id.*

3 **II. DISCUSSION**

4 The Court has reviewed the parties’ sealing motions and the declarations submitted in  
5 support thereof. The Court finds that the parties have articulated compelling reasons and good  
6 cause to seal certain portions of the submitted documents. The proposed redactions are also  
7 narrowly tailored. The Court’s rulings on the sealing requests are set forth in the tables below:

8 **A. ECF 300**

<u>ECF No.</u>	<u>Document to be Sealed</u>	<u>Result</u>	<u>Reasoning</u>
300-4	Finjan’s <i>Daubert</i> Motion	GRANTED as to highlighted portions.	Contains highly confidential technical information regarding Blue Coat’s proprietary technology, and confidential aspects of Blue Coat’s business and finances. Declaration of Eugene Marder in Support of Finjan’s Administrative Motion to File Under Seal, ECF 313 (“Marder Sealing Decl.”) ¶ 7.
300-6	Finjan’s Motion <i>in Limine</i> No. 2	GRANTED as to highlighted portions.	Contains highly confidential information, including financial information and disclosures regarding confidential aspects of Blue Coat’s business. Marder Sealing Decl. ¶ 5.
300-8	Finjan’s Motion <i>in Limine</i> No. 2	GRANTED as to highlighted portions.	Contains highly confidential technical information regarding Blue Coat’s proprietary technology, and confidential aspects of Blue Coat’s business and finances. Marder Sealing Decl. ¶ 6.
301-1	Declaration of Hannah Lee in Support of Finjan’s Motions <i>in Limine</i> Nos. 1-4 and <i>Daubert</i> Motion (“Lee Decl.”)	DENIED.	Does not contain confidential information of either party. Marder Sealing Decl. ¶ 8; Declaration of Hannah Lee in Support of Finjan’s Administrative Motion to File Under Seal, ECF 300-1 (“Lee Finjan Sealing Decl.”) ¶ 3.
301-3	Ex. 2 to Lee Decl.	GRANTED.	Contains Blue Coat’s sensitive and highly confidential financial and competitive information, which is not publicly disclosed. Marder Sealing Decl. ¶ 9. Contains information confidential to Finjan’s business and licensing practices. Lee Finjan Sealing Decl. ¶ 7.

1	301-5	Ex. 6 to Lee Decl.	GRANTED.	Contains Blue Coat's sensitive and highly confidential financial and competitive information, which is not publicly disclosed. Marder Sealing Decl. ¶ 10.
2	301-7	Ex. 7 to Lee Decl.	GRANTED.	Contains Blue Coat's sensitive and highly confidential financial and competitive information, which is not publicly disclosed. Marder Sealing Decl. ¶ 11.
3	301-9	Ex. 8 to Lee Decl.	GRANTED.	Contains Blue Coat's sensitive and highly confidential financial and competitive information, which is not publicly disclosed. Marder Sealing Decl. ¶ 12.
4	301-11	Ex. 9 to Lee Decl.	GRANTED.	Contains Blue Coat's sensitive and highly confidential financial and competitive information, which is not publicly disclosed. Marder Sealing Decl. ¶ 13.
5	301-13	Ex. 10 to Lee Decl.	GRANTED.	Contains Blue Coat's sensitive and highly confidential financial and competitive information, which is not publicly disclosed. Marder Sealing Decl. ¶ 14.
6	302-1	Ex. 11 to Lee Decl.	GRANTED.	Contains Blue Coat's sensitive and highly confidential financial and competitive information, which is not publicly disclosed. Marder Sealing Decl. ¶ 15.
7	302-3	Ex. 12 to Lee Decl.	GRANTED.	Contains Blue Coat's sensitive and highly confidential financial and competitive, which is not publicly disclosed. Marder Sealing Decl. ¶ 16.
8	302-5	Ex. 13 to Lee Decl.	DENIED.	Does not contain confidential information of either party. Marder Sealing Decl. ¶ 17; Lee Finjan Sealing Decl. ¶ 3.
9	303-1	Ex. 16 to Lee Decl.	GRANTED.	Contains highly confidential and sensitive information about the operation, reporting functions and infrastructure, and software components of Blue Coat products, which is not publicly disclosed. Marder Sealing Decl. ¶ 18.
10	303-3	Ex. 17 to Lee Decl.	GRANTED.	Contains Blue Coat's sensitive and highly confidential financial and competitive information, which is not publicly disclosed. Marder Sealing Decl. ¶ 19.
11	303-5	Ex. 19 to Lee Decl.	DENIED.	Does not contain confidential information of either party. Marder Sealing Decl. ¶ 20; Lee Finjan Sealing Decl. ¶ 3.

25                   **B. ECF 305**

<u>ECF No.</u>	<u>Document to be Sealed</u>	<u>Result</u>	<u>Reasoning</u>
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1	305-3	Blue Coat's Motion <i>in Limine</i> No. 1	GRANTED as to highlighted portions.	Contains confidential competitive and financial information. Declaration of Robin L. Brewer in Support of Blue Coat's Administrative Motion to File Under Seal, ECF 305-1 ("Brewer Sealing Decl.") ¶ 8.
2	305-5	Blue Coat's Motion <i>in Limine</i> No. 4	GRANTED as to highlighted portions.	Contains confidential competitive and financial information. Brewer Sealing Decl. ¶ 8.
3	305-7	Blue Coat's Motion <i>in Limine</i> No. 5	GRANTED as to highlighted portions.	Contains confidential competitive and financial information. Brewer Sealing Decl. ¶ 8.
4	305-9	Declaration of Robin L. Brewer in Support of Blue Coat's Motions <i>in Limine</i> ("Brewer Decl.")	GRANTED as to highlighted portions.	Contains confidential financial information relating to WebPulse revenues. Brewer Sealing Decl. ¶ 9.
5	305-11	Ex. 1 to Brewer Decl.	GRANTED as to highlighted portions.	Contains confidential competitive and financial information relating to Blue Coat and Finjan, and confidential information relating to Blue Coat's backend systems. Brewer Sealing Decl. ¶ 10; Declaration of Hannah Lee in Support of Blue Coat's Administrative Motion to File Under Seal, ECF 312 ("Lee Blue Coat Sealing Decl.") ¶¶ 4-5.
6	305-12	Ex. 2 to Brewer Decl.	GRANTED.	Contains confidential competitive and financial information relating to Blue Coat and Finjan. Brewer Sealing Decl. ¶ 11; Lee Blue Coat Sealing Decl. ¶ 4.
7	305-13	Ex. 3 to Brewer Decl.	GRANTED.	Contains sensitive and confidential sales and revenue information. Brewer Sealing Decl. ¶ 12.
8	305-14	Ex. 4 to Brewer Decl.	GRANTED.	Contains sensitive and confidential sales and revenue information relating to WebPulse revenue. Brewer Sealing Decl. ¶ 13.
9	305-15	Ex. 12 to Brewer Decl.	GRANTED as to p. 14, ll.14-15, 17; p. 15, ll.12-13; p. 32 ll.22-23; p. 36, ll.4-5, 7-9, 26; p.39, ll.25; DENIED as to the remainder.	Contains confidential information relating to Finjan's licensing negotiations and license agreements, as well as confidential information relating to Finjan's products, their revenues, and legal analysis of their patented technology. Lee Blue Coat Sealing Decl. ¶¶ 4-5. The remainder is denied because Finjan has not indicated that those portions of this document contain confidential information. <i>See id.</i>
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1	305-16	Ex. 53 to Brewer Decl.	GRANTED as to p. 8, ll.21-23, p.9, ll.18, 25; p. 11, ll. 15, 22; p.13, ll.10-11, 13-15; p.16, ll.20; DENIED as to the remainder.	Contains confidential information relating to: Finjan's licensing negotiations and license agreements; Finjan's products, their revenues, and legal analysis of their patented technology; and Finjan's awareness of products and competitors. Lee Blue Coat Sealing Decl. ¶¶ 4-6. The remainder is denied because Finjan has not indicated that those portions of this document contain confidential information. <i>See id.</i>
2	305-17	Ex. 54 to Brewer Decl.	GRANTED.	Contains Blue Coat confidential and proprietary competitive information and technical information. Brewer Sealing Decl. ¶ 15.
3	305-18	Ex. 55 to Brewer Decl.	GRANTED.	Contains Blue Coat confidential and proprietary competitive information and technical information. Brewer Sealing Decl. ¶ 15.
4	305-19	Ex. 56 to Brewer Decl.	GRANTED.	Contains Blue Coat confidential technical and competitive information. Brewer Sealing Decl. ¶ 16.
5	305-20	Ex. 57 to Brewer Decl.	GRANTED.	Contains Blue Coat confidential technical and competitive information. Brewer Sealing Decl. ¶ 16.
6	305-21	Ex. 58 to Brewer Decl.	GRANTED.	Contains Blue Coat confidential technical and competitive information. Brewer Sealing Decl. ¶ 16.
7	305-22	Ex. 60 to Brewer Decl.	GRANTED.	Contains Blue Coat confidential technical and competitive information. Brewer Sealing Decl. ¶ 16. Contains confidential information relating to Finjan's licensing negotiations and license agreements. Lee Blue Coat Sealing Decl. ¶ 4.
8	305-23	Ex. 61 to Brewer Decl.	GRANTED.	Contains Blue Coat confidential technical and competitive information. Brewer Sealing Decl. ¶ 16. Contains confidential information relating to Finjan's licensing negotiations and license agreements. Lee Blue Coat Sealing Decl. ¶ 4.
9	305-24	Ex. 62 to Brewer Decl.	GRANTED.	Contains Blue Coat confidential technical and competitive information. Brewer Sealing Decl. ¶ 16. Contains confidential information relating to Finjan's licensing negotiations and license agreements. Lee Blue Coat Sealing Decl. ¶ 4.
10	305-25	Ex. 63 to Brewer Decl.	GRANTED.	Contains Blue Coat confidential and proprietary competitive information and technical information. Brewer Sealing Decl. ¶ 15.
11	305-26	Ex. 64 to Brewer Decl.	GRANTED.	Contains Blue Coat confidential and proprietary competitive information and technical information. Brewer Sealing Decl. ¶ 15.
12	305-27	Ex. 65 to Brewer Decl.	GRANTED.	Contains Blue Coat confidential and proprietary competitive information and technical information. Brewer Sealing Decl. ¶ 15.

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1	305-28	Ex. 66 to Brewer Decl.	GRANTED.	Contains Blue Coat confidential and proprietary competitive information and technical information. Brewer Sealing Decl. ¶ 15.
2	305-29	Ex. 86 to Brewer Decl.	GRANTED.	Contains confidential information relating to Finjan's licensing negotiations and license agreements. Lee Blue Coat Sealing Decl. ¶ 4.
3	305-30	Ex. 87 to Brewer Decl.	GRANTED.	Contains confidential competitive and financial information relating to Blue Coat. Brewer Sealing Decl. ¶ 10. Contains confidential information relating to Finjan's licensing negotiations and license agreements. Lee Blue Coat Sealing Decl. ¶ 4.
4	305-31	Ex. 88 to Brewer Decl.	GRANTED.	Contains confidential information relating to Finjan's licensing negotiations and license agreements. Lee Blue Coat Sealing Decl. ¶ 4.
5	305-32	Ex. 89 to Brewer Decl.	GRANTED.	Contains confidential information relating to Finjan's licensing negotiations and license agreements. Lee Blue Coat Sealing Decl. ¶ 4.
6	305-33	Ex. 90 to Brewer Decl.	GRANTED.	Contains confidential information relating to Finjan's licensing negotiations and license agreements. Lee Blue Coat Sealing Decl. ¶ 4.
7	305-34	Ex. 91 to Brewer Decl.	GRANTED.	Contains confidential information relating to Finjan's licensing negotiations and license agreements. Lee Blue Coat Sealing Decl. ¶ 4.
8	305-35	Ex. 92 to Brewer Decl.	GRANTED.	Contains confidential information relating to Finjan's licensing negotiations and license agreements. Lee Blue Coat Sealing Decl. ¶ 4.
9	305-36	Ex. 93 to Brewer Decl.	GRANTED.	Contains confidential information relating to Finjan's licensing negotiations and license agreements. Lee Blue Coat Sealing Decl. ¶ 4.
10	305-37	Ex. 94 to Brewer Decl.	GRANTED.	Contains confidential information relating to Finjan's licensing negotiations and license agreements. Lee Blue Coat Sealing Decl. ¶ 4.
11	305-38	Ex. 95 to Brewer Decl.	GRANTED.	Contains confidential information relating to Finjan's licensing negotiations and license agreements. Lee Blue Coat Sealing Decl. ¶ 4.
12	305-39	Ex. 96 to Brewer Decl.	GRANTED.	Contains confidential information relating to Finjan's licensing negotiations and license agreements. Lee Blue Coat Sealing Decl. ¶ 4.
13	305-40	Ex. 97 to Brewer Decl.	GRANTED.	Contains confidential information relating to Finjan's licensing negotiations and license agreements. Lee Blue Coat Sealing Decl. ¶ 4.
14	305-41	Ex. 98 to Brewer Decl.	GRANTED.	Contains confidential information relating to Finjan's licensing negotiations and license agreements. Lee Blue Coat Sealing Decl. ¶ 4.
15	305-42	Ex. 118 to Brewer Decl.	GRANTED.	Contains confidential competitive and financial information relating to Blue Coat. Brewer Sealing Decl. ¶ 10.

1           **III. ORDER**  
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3           For the reasons set forth below, each of the parties' motions is GRANTED IN PART and  
4           DENIED IN PART. Under Civil Local Rule 79-5(e)(2), for any request that has been denied  
5           because the party designating a document as confidential or subject to a protective order has not  
6           provided sufficient reasons to seal, the submitting party must file the unredacted (or lesser  
7           redacted) documents into the public record no earlier than 4 days and no later than 10 days from  
8           the filing of this order.

9           **IT IS SO ORDERED.**  
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11           Dated: September 27, 2017  
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13           BETH LABSON FREEMAN  
14           United States District Judge  
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